

From: [Brett Jensen](#)
To: [Ryan Shaffer](#); [Jessica Yuhas](#); Gerry.Fagan@moultonbellingham.com; [Christopher Sweeney](#); [Jon Wilson](#); [Michael Sarabia](#); Jordan.FitzGerald@moultonbellingham.com; Joel.Taylor@mmt-law.com
Cc: [Rob Stepan](#); [Jared Brannan](#); carrie.nance@moultonbellingham.com; [Barbara Bessey](#); [Sylvia Basnett](#); [Katy Gannon](#); [James Murnion](#); [Matthew Merrill](#); [Debbie Braaten](#)
Subject: RE: Caekaert/Mapley & Rowland Schulze: Response to WTNy's 7/27/2023 Ltr. re Rule 35 Exam
Date: Thursday, August 17, 2023 10:23:48 AM
Attachments: [MOA 8-16-2023.docx](#)

Hi Ryan:

I am attaching our most recent MOA, which carves out the issues needing to be resolved by the Court. This has not been approved by Dr. Bütz yet—I just want to save a little time by having everyone review it at once. Please let me know if this is acceptable, and I will circulate a final version with Exhibits for signature.

Brett C. Jensen
Brown Law Firm, P.C.
315 North 24th Street
P.O. Drawer 849
Billings, MT 59103-0849
Telephone: (406) 248-2611
Fax: (406) 248-3128

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From: Brett Jensen
Sent: Wednesday, August 9, 2023 8:12 AM
To: Ryan Shaffer <ryan@mss-lawfirm.com>; Jessica Yuhas <jessica@mss-lawfirm.com>; Gerry.Fagan@moultonbellingham.com; Christopher Sweeney <Christopher.Sweeney@moultonbellingham.com>; Jon Wilson <jwilson@brownfirm.com>; Michael Sarabia <MSarabia@brownfirm.com>; Jordan.FitzGerald@moultonbellingham.com; Joel Taylor (jtaylor@mmt-law.com <jtaylor@mmt-law.com>)
Cc: Rob Stepan <rob@mss-lawfirm.com>; Jared Brannan <jbrannan@mmt-law.com>; carrie.nance@moultonbellingham.com; Barbara Bessey <BBessey@brownfirm.com>; Sylvia Basnett <SBasnett@brownfirm.com>; Katy Gannon <katy@mss-lawfirm.com>; James Murnion <james@mss-lawfirm.com>; Matthew Merrill <matthew@merrillwaterlaw.com>; Debbie Braaten <debbie.braaten@moultonbellingham.com>

EXHIBIT

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Subject: RE: Caekaert/Mapley & Rowland Schulze: Response to WTNy's 7/27/2023 Ltr. re Rule 35 Exam

Thanks Ryan:

I am on the road today, but I will get your language over to Dr. Bütz and confirm we are good to go on that issue.

If the only issue we have left in the MOA is the cost of travel, what do you think about making a carveout in the MOA? We can then submit that dispute to Judge Watters and she can make a ruling as to that discrete issue? That way we can schedule Ms. Mapley's exam last and hopefully have a ruling in the next few months. I do not see any reason to hold up the 3 other exams while we get this issue settled and potentially blow up the scheduling order again.

Here is my proposed language RE inadvertent disclosure:

As to attorney-client privilege, the parties have agreed Dr. Bütz will not ask any questions during the subject mental examinations intended to elicit responses from Plaintiffs concerning privileged communications with their counsel, law firm staff, or consultants. In the event of an inadvertent disclosure of attorney-client privileged information within the meaning of Rule 502(b), Fed. R. Evid., Plaintiffs' counsel shall follow the procedure set forth in subsection (3) and promptly meet and confer with counsel for Defendants. In the event the parties cannot agree as to the proper procedure/remedy, Plaintiffs shall promptly file a motion requesting the assistance of the Court.

I think this language is most appropriate because it follows the rule and does not require us to speculate about how such a disclosure may occur. Let me know what you think.

Brett C. Jensen
Brown Law Firm, P.C.
315 North 24th Street
P.O. Drawer 849
Billings, MT 59103-0849
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Fax: (406) 248-3128

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From: Ryan Shaffer <ryan@mss-lawfirm.com>

Sent: Tuesday, August 8, 2023 4:03 PM

To: Brett Jensen <BJensen@brownfirm.com>; Jessica Yuhas <jessica@mss-lawfirm.com>; Gerry Fagan <Gerry.Fagan@moultonbellingham.com>; Christopher Sweeney <Christopher.Sweeney@moultonbellingham.com>; Jon Wilson <jwilson@brownfirm.com>; Michael Sarabia <MSarabia@brownfirm.com>; Jordan.FitzGerald@moultonbellingham.com; Joel Taylor <jtaylor@mmt-law.com> <jtaylor@mmt-law.com>

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Subject: RE: Caekaert/Mapley & Rowland Schulze: Response to WTNY's 7/27/2023 Ltr. re Rule 35 Exam

Brett,

Regarding the release of the raw testing data, we are fine with the data only being released to Dr. Bone so long as we have the following language included in the MOA:

Dr. Butz's report shall include a data sheet that identifies the tests given, with a corresponding score and T score/percentile rank for each such test. Furthermore, Defendants and Dr. Butz acknowledge and agree that to the extent Dr. Butz relies on the raw testing data for his opinions in this case, while such data is only being provided to Plaintiffs' retained expert Dr. Bone, Plaintiffs' counsel and retained expert Dr. Trent Holmberg shall be permitted to discuss and reference the raw testing data provided to Dr. Bone for the purpose of this litigation.

Or something along these lines.

As to Dr. Butz's travel costs to Australia, we really think that most reasonable solution is to conduct her exam and testing remotely, as Plaintiffs' experts did. We understand that the preference is for in-person, and we are making that happen for 3 of our 4 clients at great expense to them. However, the cost of doing so for Ms. Mapley under Dr. Butz's proposed terms does not justify the marginal benefit (if any) of the in-person exam for her. Thus, if Dr. Butz wants to insist on in-person exam in Australia, when a virtual exam is certainly within the standard of care and routine in a post-covid world, we think he needs to waive his professional fees for travel time. Again, if he is willing to do so, we will have agreement on Ms. Mapley's exam. If he is not, we will be asking the Court to order that one exam taken remotely.

I am not sure where we stand on the other issues in the MOA, but I think we have sorted through most of them. How about handling the inadvertent disclosure of attorney-client privileged information?

Best,

Ryan

From: Brett Jensen <BJensen@brownfirm.com>

Sent: Monday, August 7, 2023 4:12 PM

To: Ryan Shaffer <ryan@mss-lawfirm.com>; Jessica Yuhas <jessica@mss-lawfirm.com>; Gerry Fagan <Gerry.Fagan@moultonbellingham.com>; Christopher Sweeney <Christopher.Sweeney@moultonbellingham.com>; Jon Wilson <jwilson@brownfirm.com>; Michael Sarabia <MSarabia@brownfirm.com>; Jordan.FitzGerald@moultonbellingham.com; Joel Taylor <jtaylor@mmt-law.com> <jtaylor@mmt-law.com>

Cc: Rob Stepans <rob@mss-lawfirm.com>; Jared Brannan <jbrannan@mmt-law.com>; Carrie Nance <carrie.nance@moultonbellingham.com>; Barbara Bessey <BBessey@brownfirm.com>; Sylvia Basnett <SBasnett@brownfirm.com>; Katy Gannon <katy@mss-lawfirm.com>; James Murnion <james@mss-lawfirm.com>; Matthew Merrill <matthew@merrillwaterlaw.com>; Debbie Braaten <debbie.braaten@moultonbellingham.com>

Subject: RE: Caekaert/Mapley & Rowland Schulze: Response to WTNy's 7/27/2023 Ltr. re Rule 35 Exam

Hi Ryan:

I just heard back from Dr. Bütz, and this is where things stand:

Regarding the release of raw testing data, Dr. Bütz will agree to release to Dr. Bone; however, Dr. Holmberg has not demonstrated through the information provided that he has adequate training, supervision, and experience conducting psychological assessments. I have Dr. Bütz's supporting information that I can provide you if you want. To keep things simple, can the MOA stipulate to the release of raw testing data to Dr. Bone only for full resolution of this issue?

As for Dr. Bütz's time in transit, I unfortunately do not have authority for further concession on the issue of cost. As you read in Dr. Bütz's July 17th letter, he has already limited his time in transit costs to a full 8-hour day. Obviously the trip to Australia is going to involve much longer days.

Let me know if you'd like to chat further.

Sincerely,

Brett C. Jensen
Brown Law Firm, P.C.
315 North 24th Street
P.O. Drawer 849
Billings, MT 59103-0849
Telephone: (406) 248-2611
Fax: (406) 248-3128

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From: Brett Jensen

Sent: Tuesday, August 1, 2023 2:25 PM

To: Ryan Shaffer <ryan@mss-lawfirm.com>; Jessica Yuhas <jessica@mss-lawfirm.com>; Gerry.Fagan@moultonbellingham.com; Christopher Sweeney <Christopher.Sweeney@moultonbellingham.com>; Jon Wilson <jwilson@brownfirm.com>; Michael Sarabia <MSarabia@brownfirm.com>; Jordan.FitzGerald@moultonbellingham.com; Joel Taylor (jtaylor@mmt-law.com <jtaylor@mmt-law.com>

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Subject: RE: Caekaert/Mapley & Rowland Schulze: Response to WTNy's 7/27/2023 Ltr. re Rule 35 Exam

Thanks Ryan. I am following up with Dr. Bütz about this. That seems like a sensible solution re the raw testing data—I just need to make sure he is good with it.

I've also had some continued discussions with WTNy about the business class upgrades and time in transit. Can we resolve this issue if WTNy agrees to cover the upgrades, i.e. Plaintiffs cover the cost of seats in economy and WTNy covers the upgrades, and in exchange Plaintiffs cover Dr. Bütz's time in transit? Like we discussed yesterday, the concession for Dr. Bütz to fly halfway around the world in lieu of Ms. Mapley completing litigation activities in the forum where she filed suit is already a major concession. Dr. Bütz has thoroughly explained in his letters and provided supporting studies showing why in-person assessments are necessary. I frankly don't understand Plaintiffs' distinction between time in transit and travel costs. Both are additional costs directly related to Dr. Bütz's concession to travel for the examinations. Let me know if that would be a workable compromise.

Brett C. Jensen
Brown Law Firm, P.C.
315 North 24th Street
P.O. Drawer 849
Billings, MT 59103-0849
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Fax: (406) 248-3128

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From: Ryan Shaffer <ryan@mss-lawfirm.com>

Sent: Monday, July 31, 2023 1:51 PM

To: Brett Jensen <BJensen@brownfirm.com>; Jessica Yuhas <jessica@mss-lawfirm.com>; Gerry.Fagan@moultonbellingham.com; Christopher Sweeney <Christopher.Sweeney@moultonbellingham.com>; Jon Wilson <jwilson@brownfirm.com>; Michael Sarabia <MSarabia@brownfirm.com>; Jordan.FitzGerald@moultonbellingham.com; Joel Taylor (jtaylor@mmt-law.com <jtaylor@mmt-law.com>)

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Subject: RE: Caekaert/Mapley & Rowland Schulze: Response to WTNy's 7/27/2023 Ltr. re Rule 35 Exam

Brett,

Following up on our call, so long as Dr. Butz agrees to provide the raw test data to our experts (Bone and Holmberg) we are good not requiring disclosure to Plaintiffs' counsel.

Thanks,

Ryan R. Shaffer



**Meyer, Shaffer
& Stepans, PLLP**

Montana Office:
430 Ryman St.
Missoula, MT 59802
Tel: 406-543-6929
Fax: 406-721-1799

Wyoming Office:

3490 Clubhouse Drive, Suite 104
Wilson, WY 83014
Tel: 307-734-9544
Fax: 307-733-3449

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Sent: Monday, July 31, 2023 10:45 AM

To: Jessica Yuhas <jessica@mss-lawfirm.com>; Gerry.Fagan@moultonbellingham.com; Christopher Sweeney <Christopher.Sweeney@moultonbellingham.com>; Jon Wilson <jwilson@brownfirm.com>; Michael Sarabia <MSarabia@brownfirm.com>; Jordan.FitzGerald@moultonbellingham.com; Joel Taylor (<jtaylor@mmt-law.com> <jtaylor@mmt-law.com>)

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Subject: RE: Caekaert/Mapley & Rowland Schulze: Response to WTNY's 7/27/2023 Ltr. re Rule 35 Exam

Hi Ryan:

Thanks for your letter. Can you chat with us today at 2pm? I will send out instructions to our conference line.

Brett C. Jensen
Brown Law Firm, P.C.
315 North 24th Street
P.O. Drawer 849
Billings, MT 59103-0849
Telephone: (406) 248-2611
Fax: (406) 248-3128

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From: Jessica Yuhas <jessica@mss-lawfirm.com>

Sent: Friday, July 28, 2023 2:52 PM

To: Brett Jensen <BJensen@brownfirm.com>; Gerry Fagan <Gerry.Fagan@moultonbellingham.com>; Christopher Sweeney <Christopher.Sweeney@moultonbellingham.com>; Jon Wilson <jwilson@brownfirm.com>; Michael Sarabia <MSarabia@brownfirm.com>; Jordan.FitzGerald@moultonbellingham.com; Joel Taylor <jtaylor@mmt-law.com> <jtaylor@mmt-law.com>

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Subject: Caekaert/Mapley & Rowland Schulze: Response to WTNy's 7/27/2023 Ltr. re Rule 35 Exam

Counsel,

Please see our attached response to your letter of July 27, 2023. This will follow via U.S. Mail.

Thank you,

Jessica Yuhas
Paralegal



Meyer, Shaffer
& Stepans, PLLP

Montana Office:

430 Ryman St.
Missoula, MT 59802
Tel: 406-543-6929
Fax: 406-721-1799

Wyoming Office:

3490 Clubhouse Drive, Suite 104
Wilson, WY 83014
Tel: 307-734-9544
Fax: 307-733-3449

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